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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : HOGLUND et al. Confirmation No: 8514
Appl. No. : 10/070,412
Filed : March 15, 2002
Title : DNA CONSTRUCT AND ITS USE

TC/A.U. : 1638
Examiner : R. Kallis

Docket No.: : HOGL3001/REF
Customer No: : 23364

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Official Action of August 27, 2004, in connection with the above identified application.

The Official Action is a restriction requirement in which it is urged that there are two separate and distinct inventions claimed in this application. Applicants elect the Group I invention, with traverse.

In the Official Action the Examiner states that the inventions listed as Group I and II do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features wherein the special technical feature of an oilseed plant cell containing a beta carotene C-4-oxygenase gene from *H. pluvialis* was known in the art. Then the Examiner cites Mann et al. WO 98/18910 and states that Mann et al. teach transformed tobacco comprising a beta carotene C-4-oxygenase gene from *H. pluvialis* (crtO) operably linked to the seed specific *pds* promoter, and polynucleotide encoding the transit peptide, from tomato on page 23, and thus there is no special technical feature linking Groups I and II.

However, Applicants believe the Group II invention should be rejoined with the Group I invention since they both contain a truncated beta carotene C-4 oxygenase gene from *H. pluvialis*. The Mann et al. reference contains a whole beta carotene C-4 oxygenase gene from *H. pluvialis*, i.e. not a truncated one. Accordingly, it is believed

Appl. No. 10/070,412
Amendment dated: September 10, 2004
Reply to OA of: August 27, 2004

that both Groups I and II do relate to a single general inventive concept and withdrawal of the restriction is most respectfully requested.

In view of the election of the Group I invention with traverse, an early and favorable action on the merits is now believed to be in order and is most respectfully requested.

Respectfully submitted,

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REF/kdd
Response to Restrict Requirement w traverse.wpd

September 10, 2004